



Police Law Bulletin



City Attorneys' Office

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NORTH CAROLINA SUPREME COURT



Search Warrant Established Nexus to Residence

State v. Bailey, ___ N.C. ___, ___ S.E.2d ___ (May 1, 2020).

On April 25, 2017, deputies with the Carteret County Sheriff's Office were conducting surveillance at a secluded parking lot outside of an apartment complex. They observed a Jeep pull into the parking lot, and recognized its occupants based upon previous drug-related activities. The deputies knew that the occupants lived at 146 East Chatham Street, and not at the apartment complex. They then observed a female get out of a nearby Mercury and walk to the Jeep. After entering the Jeep and remaining approximately 30 seconds inside the vehicle, the woman exited the Jeep and returned to the Mercury. Both vehicles then left the parking lot at a high rate of speed. Based upon their training and experience, the deputies believed they had just witnessed a drug transaction. The driver of the Mercury was stopped for various traffic violations and ultimately admitted to having purchased heroin in the parking lot from one of the people inside the Jeep. The Jeep was separately followed to the occupants' residence.

Officers obtained a warrant to search the house. At the time of execution, defendant, his girlfriend, and the two occupants of the Jeep were found in the residence. Cocaine, paraphernalia and currency were found in the defendant's bedroom.

Defendant was charged with trafficking in cocaine. Defendant filed a motion to suppress which the trial court denied. Defendant pled guilty and appealed. A divided panel of the Court of Appeals affirmed the denial of his motion. Defendant appealed. The North Carolina Supreme Court unanimously affirmed.

A search warrant for a residence must demonstrate some nexus between the suspected criminal activity and the home. The court determined that the affidavit in the case at hand established a sufficient connection to the home. The detective observed a probable drug transaction and was familiar with the subjects in the Jeep, including their drug histories and address. Coupled with the close-in-time admission from the buyer that she purchased heroin from one of the men and the fact that another officer followed the Jeep from the site of the suspected buy to the residence, the search warrant affidavit supported an inference that drugs or evidence of drug dealing would be found in the home. The warrant was therefore supported by probable cause and comported with the Fourth Amendment.

Probable Cause Did Not Support Issuance of Search Warrant for Defendant's Residence and Vehicle

State v. Lewis, ___ N.C. ___, 831 S.E.2d 37 (Aug. 16, 2019).

On September 21, 2014, a man committed armed robbery at a Family Dollar store in Hoke County. The suspect fled the scene in a dark blue Nissan Titan pickup truck. On September 26, a similar robbery occurred at another Dollar General store in Hoke County. Two days later, a third robbery took place at another Dollar General store in Hoke County. Law enforcement officers did not receive a description of the vehicle driven by the suspect in the second and third robberies.

On October 19, a robbery having the same modus operandi took place at a Sweepstakes store in Smithfield in nearby Johnston County. As the suspect exited the store, a Smithfield police officer identified the man as Robert Dwayne Lewis. The suspect fled the scene in a dark gray Kia Optima. Smithfield police notified the Hoke County Sheriff's Office of the robbery, and provided them with the license plate number of the Kia as well as the address associated with the vehicle's registration, 7085 Laurinburg Road.

Deputy Kavanaugh with the Hoke County Sheriff's Office drove past the residence and observed a blue Nissan Titan truck parked in the yard. Later that same day, he saw a dark gray Kia Optima parked in the yard in addition to the Nissan Titan. He then parked across the street from the home and, shortly thereafter, saw a man matching the suspect's description exit the house and walk to the mailbox across the street. Deputy Kavanaugh approached the man and asked him for his name. The man identified himself as Robert Lewis, after which Deputy Kavanaugh immediately placed him under arrest.

After arresting defendant, Deputy Kavanaugh approached the residence and spoke to Waddell McCollum, defendant's stepfather, on the front steps of the home. McCollum informed Deputy Kavanaugh that defendant lived at the residence. He further stated that defendant owned the Kia Optima and that, although McCollum owned the Nissan Titan, defendant also drove that vehicle on occasion. Deputy Kavanaugh walked over to the Kia and observed a BB&T money bag on the passenger floor.

Following defendant's arrest, Detective William Tart—who had been investigating the three Hoke County robberies—prepared a search warrant application seeking permission to search 7085 Laurinburg Road as well as the Nissan Titan and Kia Optima. The affidavit accompanying

the search warrant application described in detail the similarities between the four robberies. The affidavit also stated that Smithfield police had identified defendant as the perpetrator of the October 19 robbery and that he had been arrested at 7085 Laurinburg Road. The affidavit, however, failed to (1) disclose that defendant lived at that particular address, (2) contain any other information linking defendant to that address, (3) describe the circumstances surrounding his arrest at that address, or (4) mention Deputy Kavanaugh's interactions with defendant or his stepfather. With regard to the vehicles, the affidavit stated that defendant had driven away from the September 21 robbery in a dark blue Nissan Titan and that he had fled the October 19 scene in a Kia Optima. The affidavit further stated that a dark blue Nissan Titan was observed at 7085 Laurinburg Road by Hoke County deputies. The affidavit did not mention the fact that Deputy Kavanaugh had also seen a Kia Optima parked in front of the residence. Nor did it state that the deputy had seen a bank money bag on the floor of the vehicle.

A magistrate issued a search warrant for the residence, the Nissan Titan, and the Kia Optima. The warrant was executed and several items of evidence were seized from the vehicles and residence.

Defendant was indicted in both Hoke and Johnston Counties for various robbery and kidnapping charges. Defendant filed motions to suppress which were denied. Defendant appealed. The Court of Appeals held that the search warrant affidavit was sufficient to establish probable cause to search the two vehicles but was insufficient to establish probable cause to search the dwelling itself. The State and the defendant appealed.

The Court of Appeals first addressed whether the search warrant affidavit established probable cause to search the residence. The search warrant affidavit detailed the three Hoke County robberies, noted that the suspect fled the scene of the first one in a dark blue Nissan Titan, and that this vehicle was consistent with a dark blue Nissan Titan observed by Hoke County Deputies at 7085 Laurinburg Road. In addition, the affidavit detailed the similarities between the Hoke County robberies and the Johnston County robbery. It contained a statement that the suspect in the Johnston County robbery had been identified as Robert Lewis by Smithfield law enforcement officers, and that the suspect had fled the scene of that robbery in a Kia Optima. However, Detective Tart failed to set forth any of the circumstances surrounding defendant's arrest at the residence and offered no explanation as to why law enforcement officers had gone to that address in the first place. Notably, the affidavit did not include the fact that the address had been provided by Johnston County law enforcement officers. It also failed to include any details of Deputy Kavanaugh's conversation with defendant's stepfather—who had confirmed that defendant lived in the home—and contained no mention of the fact that a Kia Optima was parked in front of the residence at the time of defendant's arrest. For these reasons, the Court concluded that the affidavit did not connect defendant with the residence in any meaningful way beyond the mere fact that he was arrested there and that a dark blue Nissan Titan was observed at the house. At the time of his arrest, Defendant could have been present at the residence for any number of reasons. Absent additional information linking him to the residence or connecting the house with criminal activity, no basis existed for the magistrate to infer that evidence of the robberies would likely be found inside the home.

Next, the Court considered whether the affidavit established probable cause to search the Kia Optima. The Court noted that the affidavit failed to mention the presence of a Kia Optima at the residence at the time of defendant's arrest. In fact, beyond stating that defendant fled the scene of the October 19 robbery in a 4-door Kia Optima, the affidavit provided no other information whatsoever concerning the Kia Optima. Had the affidavit mentioned that Deputy Kavanaugh had seen the Kia Optima at the residence, and that he had observed a BB&T money bag on the vehicle's floor board, it would have been sufficient.

The North Carolina Supreme Court concluded that the Detective's failure to include crucial information in the affidavit rendered it insufficient to establish probable cause. Accordingly, the Court affirmed in part and reversed in part the decisions of the Court of Appeals.



**FOURTH CIRCUIT
COURT OF APPEALS**

**Odor of Marijuana Supported Search Warrant for Entire Home, Including Safes, Even
After Officers Discovered Apparent Source of Odor**

U.S. v. Jones, 952 F.3d 153 (March 3, 2020).

In May 2016, the Richmond Police Department received an anonymous tip that a man named Melvin Jones was selling marijuana and crack cocaine from 3008 Berwyn Street. The tipster reported having seen Jones both sell and cook narcotics, and that he kept the tools for cooking in a safe in his closet and the drugs in different places throughout the house. Officers retained the information to be investigated at a later time.

In August, three officers went to the residence to conduct a knock and talk. When Jones opened the door, one of the officers recognized him from a previous encounter. The officers immediately smelled a strong odor of marijuana coming from inside the house. Jones was detained on the porch while officers performed a protective sweep of the home. Inside, they found smoldering marijuana on top of the trash in an open trash can in the kitchen.

One of the officers left the house to apply for a search warrant. The warrant application detailed the tip, the knock and talk, the odor of marijuana, officer training and experience, and the still-smoking marijuana inside. The warrant was issued authorizing a search of the home for narcotics and drug activity, including "any safes or locked boxes that could aid in the hiding of illegal narcotics." A safe containing a gun was found in the defendant's bedroom, and various drugs and drug distribution paraphernalia were also found in the residence.

The defendant was charged with drug offenses and as a felon in possession of a firearm. He filed a motion to suppress which the federal district court denied. The defendant pled guilty, reserving his right to appeal.

On appeal, the defendant argued the search warrant lacked probable cause and was overbroad in light of the offense at issue. According to the defendant, once officers discovered the apparent source of the odor of marijuana (the smoking marijuana in the trash), probable cause existed only as to that offense for that amount of marijuana, and gave officers no further justification to search the rest of the house or to open safes. The Fourth Circuit Court of Appeals squarely rejected this argument finding that the warrant was not overbroad. This situation was different from searches where probable cause only existed to search for a specific piece of evidence. In those cases, the search would be limited to places the item could be located and would conclude once the particular item was located. In the case at hand, however, “common sense” suggested that the smoking marijuana found by officers would not be the only amount of marijuana in the home and that any other marijuana in the home might be hidden elsewhere, including in any safes.

Therefore, the Fourth Circuit affirmed the decision of the district court denying defendant’s motion.